



February 12, 2001

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health & Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR2001-0531

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144138.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for all information relating to a specified community-based home (the "home") under the authority of the department. On November 22, 2000, you sent a letter to the requestor advising him that the request could involve hundreds of documents and asking him to narrow the request. In a letter dated December 1, 2000, you document a conversation with the requestor in which he narrowed his request to the contract that the home has with the department, information relating to the department's compensation to the home, regulations that apply to the home, and complaints against the home. You state that you have documents available to the requestor with the exception of the information submitted to this office. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law right to privacy and various statutes and section 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information and representative sample of information.¹

You assert that client-identifying information in Exhibits A and B must be withheld under section 552.101 in conjunction with common law privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We agree that the highlighted client-identifying information in Exhibits A and B must be withheld under section 552.101 in conjunction with common law privacy.

You also assert that the submitted information in Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. Section 552.101 also encompasses information protected by other statutes. Section 48.101 of the Human Resources Code pertains to disclosure of information about reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 reads in part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under . . . chapter [48 of the Human Resources Code];

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

You state that the submitted information in Exhibit C are Department of Protective and Regulatory Services Abuse and Neglect Reports and related documents. Based on your representation, we agree that the submitted information in Exhibit C is confidential pursuant to section 48.101(a) of the Human Resources Code. You state that no department rule or federal law authorizes the disclosure of the reports to this requestor. Consequently, the information must not be disclosed to the public, except for a purpose consistent with chapter 48 of the Human Resources Code. *See id.* § 48.101(b); *but see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances).

In conclusion, you must withhold the highlighted information in Exhibits A and B under section 552.101 in conjunction with common law privacy. Further, you must withhold the submitted information in Exhibit C pursuant to section 552.101 in conjunction with section 48.101 of the Human Resources Code. Having found the information at issue excepted from disclosure, we need not address your other asserted exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Bialek".

Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 144138

Encl: Submitted documents

cc: Mr. Brett Dressler
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(w/o enclosures)